

Ordinance Drafting for Local Government Attorneys

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City of Orlando, Florida

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What we'll learn

- What's an ordinance? Private v. public legislation
- Customary elements of the ordinance
- Adoption procedures
- Terms of authority
- Style and organization
- Canons of legislative interpretation



Goals of effective ordinance drafting

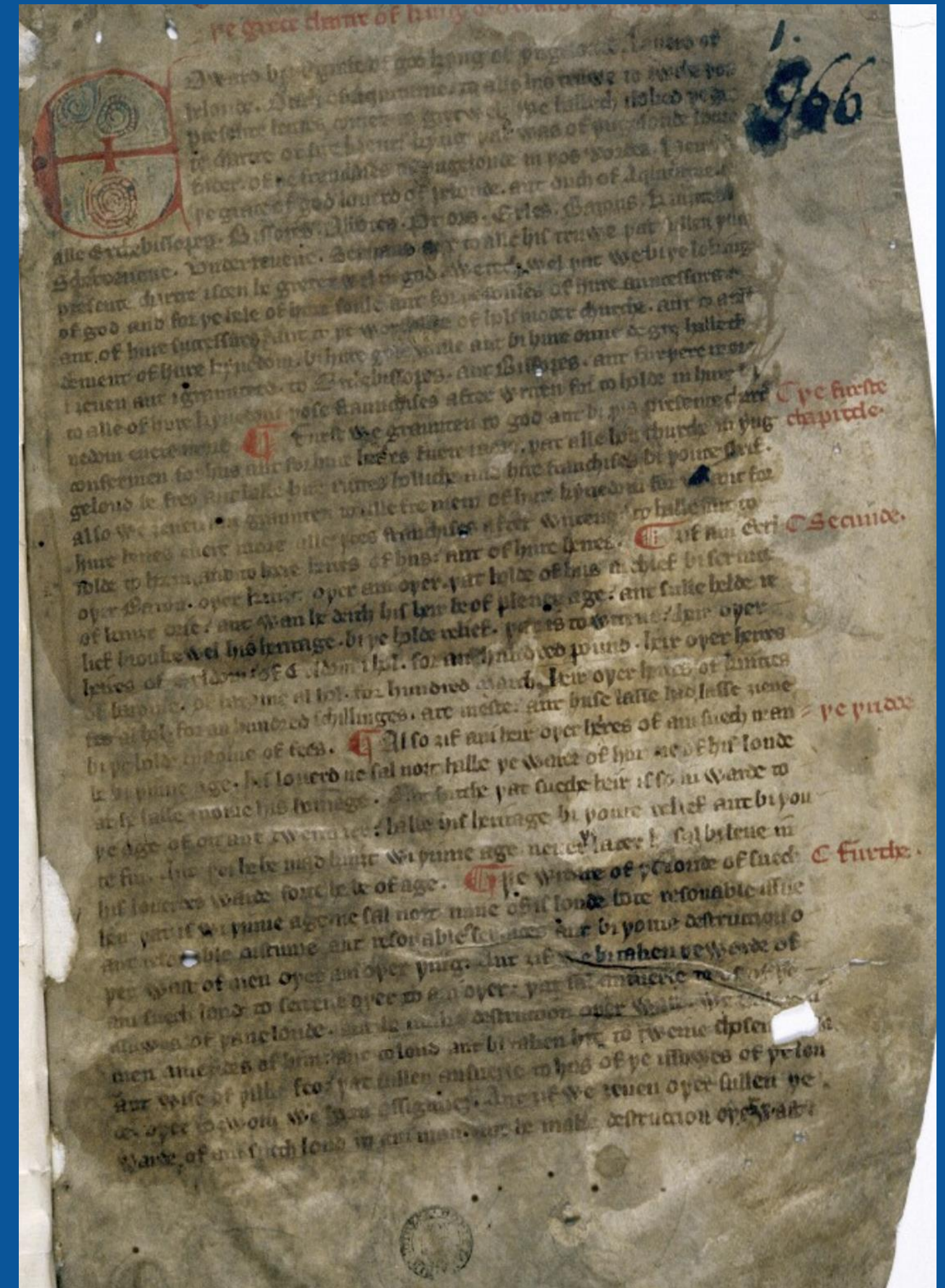
- Legally defensible
- Accessible
- Understood by all



What is an ordinance?

An ordinance is "[a]n authoritative direction, decree, or command. In more restricted sense: a public injunction or rule of narrower scope, less permanent in nature, or less constitutional character than a law or statute, such as a decree of a sovereign or (now esp. in U.S.) an enactment of a municipal or other local body."

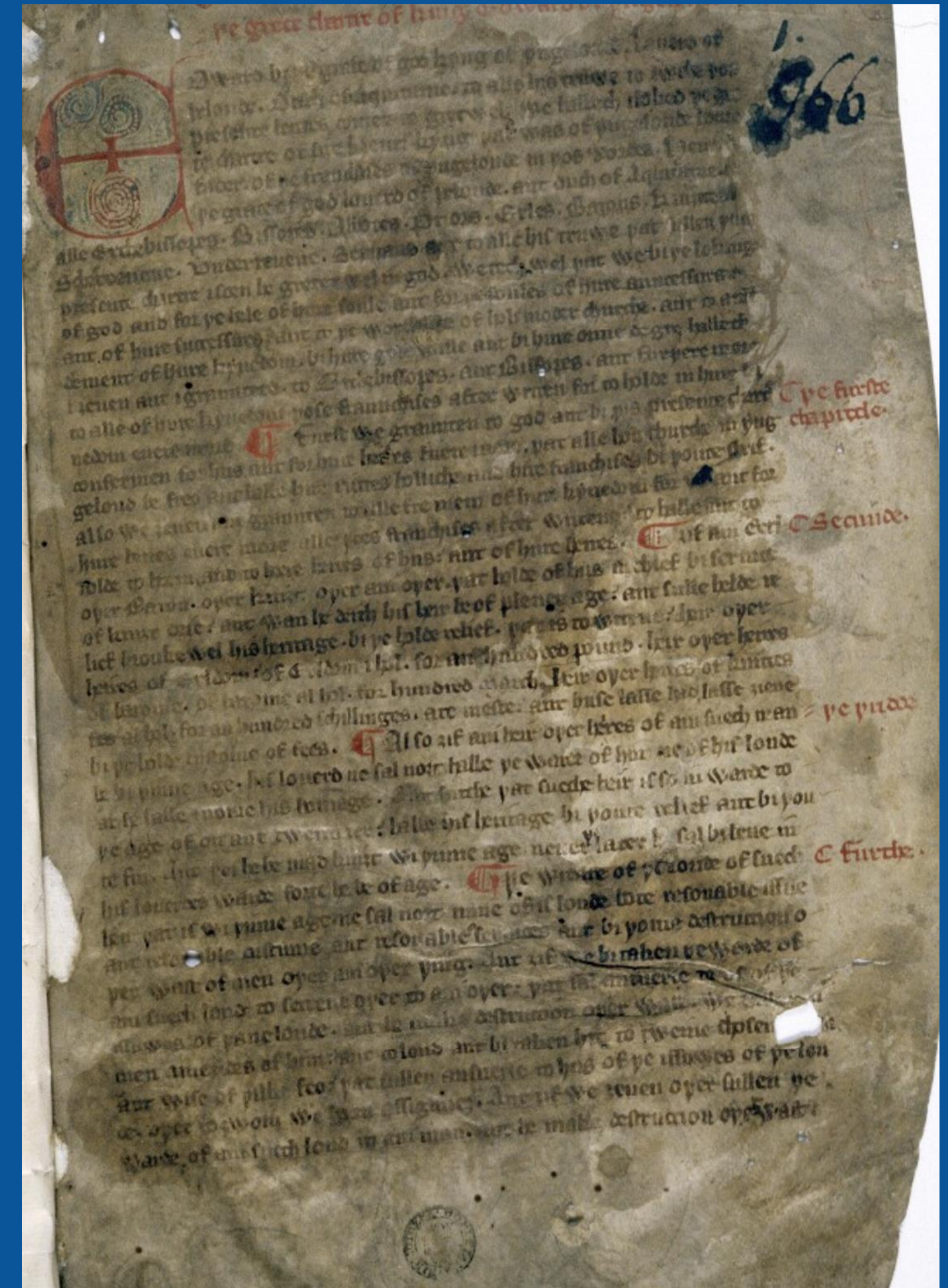
- O.E.D.



What is an ordinance?

"These by-laws of a municipal corporation are in this country given the name of *ordinances*, although in England they are called by-laws, the term *by* or *bye* meaning a place of habitation, or local community."

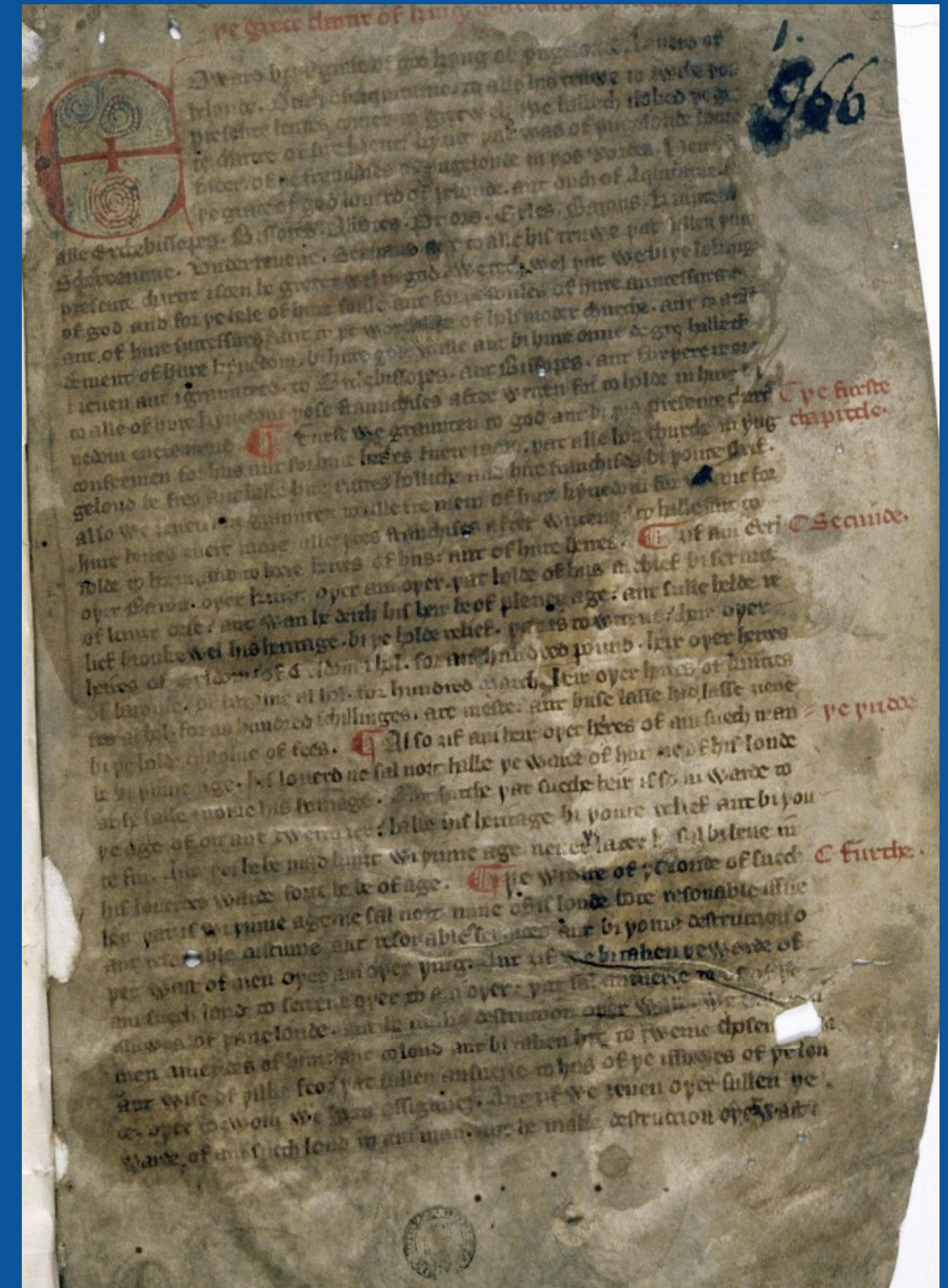
- Tiedeman



What is an ordinance?

"While the term 'ordinance' has been used in various senses since the earliest times, the term is generally used, in this country [the United States], to designate a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct, relating to the corporate affairs of the municipality."

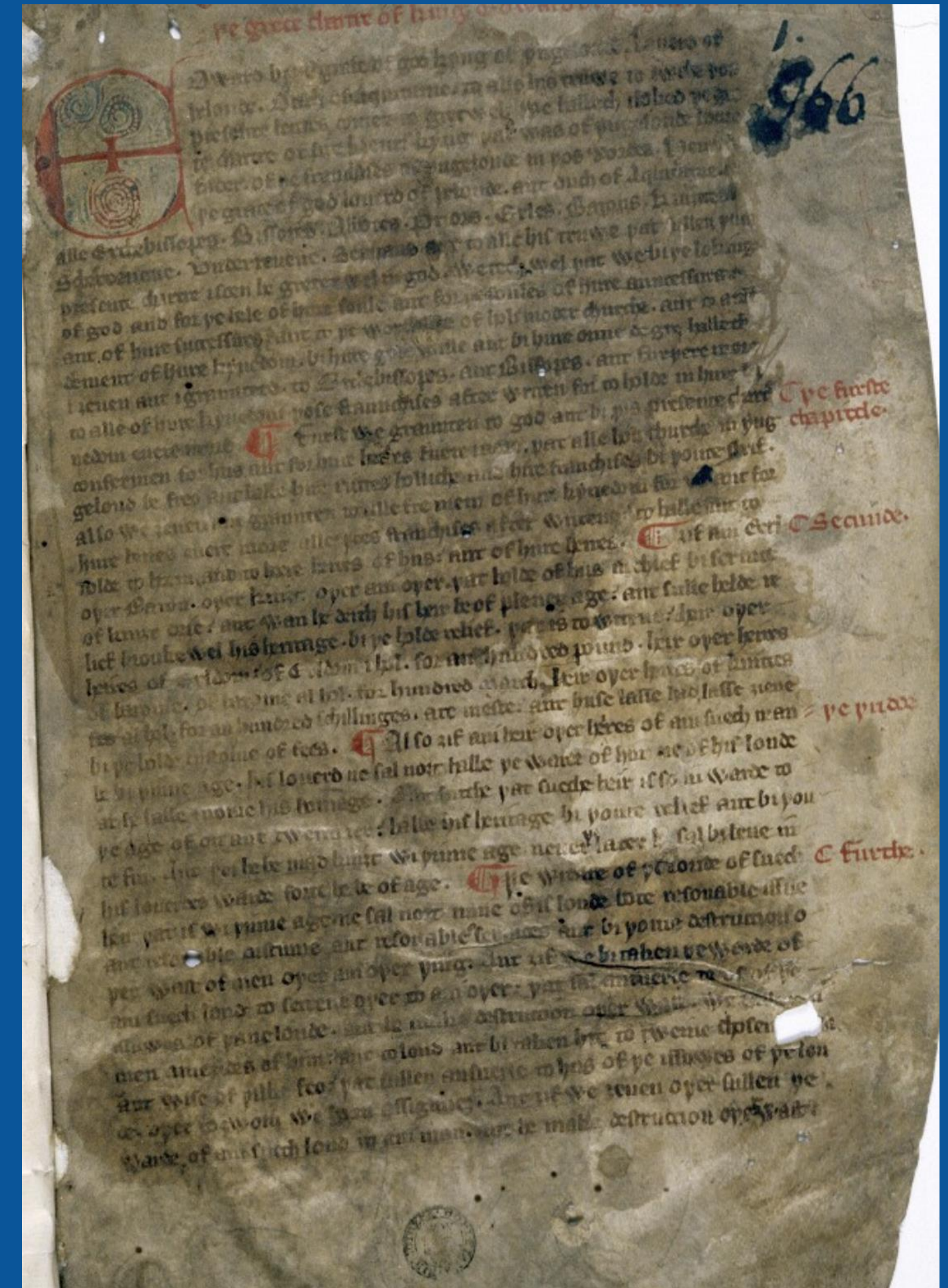
- McQuillin



What is an ordinance?

An ordinance is "an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law."

- Sec. 166.041(1)(a), Fla. Stat. (2024)



Elements of an ordinance

- In writing



ORDINANCE NO. 2016-65

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2 ORLANDO, FLORIDA, RELATING TO IMPACT FEES;
3 AMENDING CHAPTER 56, ORLANDO CITY CODE, TO
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Elements of an ordinance

- In writing
- Ordinance number
- Title
- Legislative findings
- Enacting clause

205	City, and	
206		
207	WHEREAS , the Orlando City Council hereby finds, based on the Parks Impact	
208	Fee Study, that a reasonable relationship, or rational nexus, exists between the need for	
209	additional parks and recreation facilities and the growth in population generated by new	
210	residential development; and	
211		
212	WHEREAS , the Orlando City Council hereby finds, based on the Parks Impact	
213	Fee Study, that a reasonable relationship, or rational nexus, exists between the	
214	expenditure of the funds collected pursuant to this ordinance and the benefits of new	
215	parks and recreation facilities accruing to new residential development; and	
216		
217	NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY	
218	OF ORLANDO, FLORIDA, AS FOLLOWS:	
219		
220	SECTION 1. CH. 56, AMENDED. Chapter 56, Code of the City of Orlando,	
221	Florida, is hereby amended as follows:	
222		
223	CHAPTER 56 – TRANSPORTATION IMPACT FEES	
224		
225	<u>Part I – Transportation Impact Fee</u>	
226		
227	****	
228		
229	<u>Secs. 56.24 – 56.29. Reserved.</u>	
230		
231	<u>Part II – Parks Impact Fee</u>	
232		



Elements of an ordinance

- Severability clause

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SECTION 2. CODIFICATION. The city clerk and the city attorney shall cause the Code of the City of Orlando, Florida, to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 3. SCRIVENER'S ERROR. The city attorney may correct scrivener's errors found in this ordinance by filing a corrected copy of this ordinance with the city clerk.

SECTION 4. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 5. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE FIRST READING by the City Council of the City of Orlando, Florida, at a regular meeting, the 29 day of August, 2016.

Page 12 of 13

Park impact fee ordinance.docx

CODING: Words ~~stricken~~ are deletions; words underlined are additions; **** denote omitted text.



Elements of an ordinance

- Severability clause
- Effective date

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Elements of an ordinance

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- Statutory requirements

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Codified v. uncoded

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229 **Secs. 56.24 – 56.29. Reserved.**
230
231 **Part II – Parks Impact Fee**
232
233 **Sec. 56.30. Short title, authority, and applicability.**
234
235 (a) This part shall be known and may be cited as the “Orlando Parks Impact
236 Fee Ordinance.”
237
238 (b) This ordinance is adopted pursuant to and in accordance with the
239 authority granted and limitations imposed upon the city by Article VIII,
240 Section 2(b), Florida Constitution, section 166.021, Florida Statutes, the
241 Florida Impact Fee Act (section 163.31801, Florida Statutes), Florida
242 case law relating to impact fees imposed by municipal governments, and
243 other applicable law of Florida and ordinances of the city.
244
245 (c) This ordinance applies throughout the City of Orlando.
246
247 **Sec. 56.31. Purpose, intent, and findings.**
248
249 The purpose and intent of this ordinance, and the legislative findings supporting
250 this ordinance, are set forth in City Ordinance #2016-65 and are hereby incorporated
251 into this part as if fully set forth herein.
252

Page 5 of 13
Park impact fee ordinance.docx

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Single subject rule

Each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly connected therewith.

Sec. 166.041(2), Fla. Stat. (2024)



Adoption procedures

- Notice

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- Committee/board review

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- Readings

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Adoption procedures

- Notice
- Committee/board review
- Readings
- Hearing
- Vote

ORDINANCE NO. 2016-65

1 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
2 ORLANDO, FLORIDA, RELATING TO IMPACT FEES;
3 AMENDING CHAPTER 56, ORLANDO CITY CODE, TO
4 ESTABLISH A PARKS IMPACT FEE; PROVIDING PURPOSE
5 AND INTENT, DEFINITIONS, AND ESTABLISHING PARKS
6 IMPACT FEE FUNDS AND PARKS BENEFIT AREAS;
7 IMPOSING AN IMPACT FEE ON EACH NEW SINGLE FAMILY
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17 SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

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19 **WHEREAS**, the *City of Orlando Growth Management Plan* (the "GMP"; the GMP
20 is the city's "comprehensive plan" for purposes of the Florida Community Planning Act,
21 sections 163.3164 through 163.3217, Florida Statutes) Vision Statement provides that
22 "Orlando is fortunate to have a rich heritage, grounded by a 100-year history of
23 community planning that dates back to the City Beautiful movement."; and

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25 **WHEREAS**, the GMP Vision Statement further provides that "[a]s 'The City
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Adoption procedures

- Notice
- Committee/board review
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- Hearing
- Vote
- Strict compliance

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Amending ordinances

- During adoption process



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Amending ordinances

- During adoption process
- Not by title alone



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Amending ordinances

- During adoption process
- Not by title alone
- Must lay out full section being amended



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Terms of authority

1. To create a right: "is entitled to..."



Terms of authority

1. To create a right: "is entitled to..."
2. To create discretionary authority: "may"



Terms of authority

1. To create a right: "is entitled to..."
2. To create discretionary authority: "may"
3. To create a duty: "shall"



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8. To create a duty not to act (prohibition): "shall not"



Terms of authority

- "Shall," "may," "must," and "should"



Terms of authority

- "Shall," "may," "must," and "should"
- Avoid "shall" to put verbs in future tense (e.g., "It shall be a felony to commit murder.")



Terms of authority

- "Shall," "may," "must," and "should"
- Avoid "shall" to put verbs in future tense (e.g., "It shall be a felony to commit murder.")
- False imperative



Terms of authority

- Statement of policy in the indicative mood

"It is unlawful to..."



Terms of authority

- Statement of policy in the indicative mood

"It is unlawful to..."

"The rent is due on the first day of each month."



Terms of authority

- Proper use of imperative "shall"

"Licensee shall display their registration at all times while operating a vehicle."



Terms of authority

- False imperatives

"Each child shall be at least 48-inches to ride."



Terms of authority

- False imperatives

"Each child shall be at least 48-inches to ride."

"The structure shall be set back from the right-of-way by at least 10 feet."



Style and organization

- Plain English; avoid jargon
- Use short sentences
- Organize into lists
- Embrace "negative space"
- Standardize chapters, sections, subsection, paragraphs, subparagraphs
- Avoid Roman numerals



Legislative interpretation

- Canons of construction
 - Semantic canons
 - Syntactic canons
 - Contextual canons

